

ORIGINAL

On March 9, 2007, Itasca filed a Petition for Exemption with the Board from the requirements of 49 U.S.C. 10901, to permit it to construct a new line of railroad. The proposed line will extend approximately nine miles, starting at the connection with an existing railroad line at Taconite, MN, and continuing to the site of a new steel mill to be built by Minnesota Steel Industries, LLC ("Minnesota Steel") at the end of the line at Nashwauk, all located in Itasca County, MN.

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While this new line will initially serve the Minnesota Steel facility, it will handle any additional traffic that any future customers that locate along or near the right-of-way generate.

On August 17, 2006, and again on February 5, 2007, Itasca representatives, including the undersigned, participated in a pre-filing meeting with you and members of your staff, to review the parameters of the proposed construction project and the applicable environmental review procedures and requirements. Subsequently, on January 29, 2007, Itasca petitioned SEA for waiver of the six months pre-filing notice required by the Board's environmental regulations and formally requested approval of its retention of Burns & McDonnell ("Burns & McDonnell") to act as the independent third party consultant for the preparation of the necessary environmental documentation for the project, under the Board's direction and supervision. By letters dated February 12, 2007, your office approved both requests.

Following Burns & McDonnell's approval by SEA and engagement by Itasca, Itasca, Burns & McDonnell, and SEA entered into a Memorandum of Understanding for handling the environmental and historic issues presented by this construction case. Burns & McDonnell under SEA's supervision will coordinate the National Historic Preservation Act Section 106 consultation with the State Historic Preservation Office and the Endangered Species Act Section 7 consultation with the US Fish and Wildlife Service. Burns & McDonnell under SEA's supervision will conduct a field survey of the region that would be affected by the proposed rail project, including in particular the routing that is preferred by Itasca and will most likely be presented as the proposed route for the new line.

On April 13, 2007, SEA sent a "consultation letter" to all affected federal, state, and local agencies seeking their comments on the proposed line construction. By mid June 2007, comments had been received from the affected agencies.

On May 1 and July 12, 2007, Steve Thornhill from Burns & McDonnell inspected the site. On July 12, Ken Blodgett visited the site.

The Board's regulations provide that an EIS normally is prepared in connection with a rail construction project. See 49 C.F.R. Part 1105.6(a). However, 49 C.F.R. Part 1105.6(d) provides for flexible exceptions to the general rule:

The Board may reclassify or modify these requirements for individual proceedings .... [I]n a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of 49 C.F.R. 1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact.

Itasca respectfully submits that an EA is sufficient in this case under the standards of 49 C.F.R. Part 1105.6(d), because the subject construction project is not likely to have a significant environmental impact. By reference to the specific elements of 49 C.F.R. Part 1105.7(e), and supported by the results of the Burns & McDonnell field survey noted above, our reasons are as follows:

(1) Proposed action and alternatives

If built along Itasca's preferred alignment, the proposed line is 9 miles in length, and initially is expected to handle a total of two trains each day (one daily roundtrip) seven days per week between the junction of the proposed new line with the existing rail line at a point known as Taconite and the end of the line at the proposed Minnesota Steel facility at Nashwauk. The principal commodities that will be handled over the line initially include inbound miscellaneous chemicals and outbound steel slabs and taconite pellets.

The purpose of the proposed action is to provide rail service access to the Minnesota Steel facility. Initially, Itasca examined several different right-of-way alignments but rejected all but the proposed alignment for various reasons. It rejected the alternative alignments as undesirable from the perspectives of transportation policy, property acquisition requirements, and construction engineering and environmental impacts.

(2) Transportation system

The proposed action will provide the Minnesota Steel facility with the only available rail service. The proposed alignment would not cross any public roads but would cross five private roads.

The one daily roundtrip operated over the proposed line represents entirely new traffic, all of which would otherwise move by highway. However, the principal area highways, specifically Highways 169 and 65, do not have the capacity to handle the additional truck traffic that the Minnesota Steel plant would generate. There will be no diversions of existing freight or passenger traffic either to or from other transportation systems or modes.

(3) Land use

Major land uses in the affected area include agricultural uses, logging, mining, and tourism. Much of the area that would be affected by the proposed action is woodland, and the proposed action is not expected to adversely affect or conflict with existing land use plans.

Between 100 and 120 acres of land would be required for the right-of-way. The right-of-way width is anticipated to be at least 100 feet.

(4) Energy

The proposed action will result in new rail traffic and, thus, a modest net increase in energy use for train operations. Based on an average of one roundtrip per day, seven days per week, it is estimated that 350 trains would operate over the proposed line each year.

Any natural gas or petroleum pipelines or major transmission lines crossed by the new track would be protected using a combination of land bridges, encasements and relocations in accordance with established industry standards. The proposed action will have no adverse effect on recyclable commodities, and may have a positive impact if recycled rail or crossties are used in the construction

process. No diversions of existing traffic from rail to motor carriage are expected to occur.

(5) Air

No significant impact to local or regional air quality is expected. According to 40 C.F.R. Part 81.344 and the Minnesota Department of Natural Resources, Itasca County and the region encompassing the proposed line currently are in attainment under the Clean Air Act.

(6) Noise

Anticipated traffic volume can be expected to lead to a corresponding increase in noise levels. However, there do not appear to be any sensitive noise receptors located in areas immediately adjacent to the proposed rail line.

(7) Safety

As noted above, the proposed right-of-way will not cross any public highways and the area it traverses is very sparsely settled. Consequently, safety impacts are not a major consideration.

A preliminary database search performed in accordance with ASTM Standard E1527-00 for Phase I Environmental Site Assessments indicated no hazardous waste sites in the vicinity of Itasca's proposed alignment.

(8) Biological resources

The majority of land in the area affected by the proposed action is either woodlands or the site of abandoned mining activity. A review of National Wetland Inventory (NWI) maps identified only minimal mapped wetlands that could be affected by Itasca's proposed alignment. SEA is coordinating with the Army Corps of Engineers to delineate jurisdictional waters and to address jurisdictional issues and/or Clean Water Act permit requirements, and Itasca will pursue and secure any permit that may be needed. (see Water resources below)

There are no wildlife sanctuaries or refuges, national or state parks or forests that would be affected by the proposed action. A broad search of databases containing

federal and state-listed endangered or threatened species known to occur in habitats similar to those found along Itasca's proposed alignment yielded a schedule of one federally listed animal and three state listed plant species that would be investigated during the EA preparation phases. However, no substantial impacts to these species from the proposed project are expected due to only minimal habitat for these species occurring along the proposed rail alignment. The area is not a designated critical habitat for any wildlife species. If and to the extent any sensitive species are found along the rail alignment and would be adversely affected by the proposed action, mitigation measures will be developed in coordination with the U.S. Fish and Wildlife Service and the Minnesota Department of Natural Resources.

No rare or sensitive native habitats were shown by preliminary review to be significantly affected by the proposed action.

(9) Water resources

The proposed line crosses no Waters of the U.S. and only minimal wetlands could be affected by the proposed project. The preliminary field survey conducted by Burns & McDonnell under SEA supervision indicated that the proposed action would not appear to have a lasting, adverse impact on surface or groundwater resources within the affected region.

(10) Cultural Resources

The proposed line will traverse an area with a long history of human disturbance from mining and logging activities. Burns & McDonnell under SEA supervision reviewed the site files of the Minnesota State Historic Preservation Office and determined no known historic or archaeological sites occur along or in the vicinity of the proposed rail alignment. No significant cultural resources are expected to occur within the project area due to the extensive previous disturbance of the area. Additionally, no historic structures or other potential historic or archaeological resources were observed during site visits. SEA will consult with the Minnesota State Historic Preservation Office (SHPO) to seek concurrence on appropriate measures to avoid or minimize potential Project

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impacts to any cultural resources that may be discovered during project construction.

(11) Geology and Soils

In preliminary geotechnical evaluations, the Project area was found not to include potential geologic hazards, such as areas of subsidence, giant desiccation cracks, landslides, or surface faults. The Project will incorporate features and measures to mitigate for potential seismic activity that is possible in the region.

We believe that the foregoing information should be sufficient under 49 C.F.R. Part 1105.6(d) to justify reclassification of the Itasca rail project as one requiring only an EA. However, if your office believes that any additional information is needed in order to make that determination, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", written in a cursive style.

John D. Heffner

cc: Mr. Ronald Dicklich  
Mr. David McKenzie  
Mr. Steve Thornhill  
Mr. Ken Blodgett  
Jack Muhar, Esq.